

## APPEAL NO. 010584

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 12, 2001. With regard to the issues, the hearing officer determined that the "date of injury, if any" was \_\_\_\_\_; that the appellant (claimant) had not sustained a compensable injury on that date; and that the claimant had not given timely notice to her employer of the alleged injury and did not have good cause for failing to do so; and that she did not have disability because she did not sustain a compensable injury.

The claimant appealed, citing evidence that concluded that the claimant had sustained a compensable injury and had timely reported the injury to her supervisor. The respondent (carrier) responds, urging affirmance.

### DECISION

Affirmed.

The claimant was employed by a large retail chain store. The claimant testified that on \_\_\_\_\_, as she was lifting or attempting to lift a box of greeting cards weighing 75 to 80 pounds, she felt a burning pain in her low back. The claimant testified that she could not find her supervisor, RH, that day but reported the injury to him the next day. A handwritten statement by a coworker states that the claimant went to the "store director" and complained of pain. The claimant continued working although apparently she was reassigned to another department which involved lighter duties. The claimant testified that she sought medical care and saw her family doctor, Dr. W, on October 14, 1999, however, no medical records from Dr. W during that time frame are in evidence.

The claimant had an MRI on December 15, 1999, which showed degenerative changes at L4-5 and L5-S1 with disc bulges (the claimant testified that she had had spinal surgery in 1990). Other medical records in December 1999 refer to low back pain but do not reference a work injury. Dr. W referred the claimant to Dr. T, who, in a report of December 30, 1999, references back pain "since September." Another doctor, in a report of May 15, 2000, references the box lifting incident but lists a date of injury of \_\_\_\_\_. The carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) lists a \_\_\_\_\_, date of injury and that the carrier received the first written notice on March 31, 2000.

The hearing officer commented that the claimant's testimony "seemed credible at the hearing" but after a review of the entire record, the hearing officer was obviously concerned that the "earliest records in evidence" in December 1999 did not mention a lifting incident and that the diagnostic testing only showed degenerative changes. The evidence was subject to differing interpretations. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence

(Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's injury, notice, and disability determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust (Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)), although another fact finder could have reached different conclusions. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge